UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JEFFREY L. CROOM,	:	
Plaintiff,	:	
	:	
-vs-	:	Civ. No. 3:00cv1805 (PCD)
	:	
WESTERN CONNECTICUT STATE	:	
UNIVERSITY,	:	
Defendant.	:	

RULING ON MOTION FOR RECONSIDERATION

Plaintiff moves for reconsideration of the ruling granting summary judgment on plaintiff's complaint alleging a violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq*. For the reasons set forth herein, reconsideration of the order is granted but the prior ruling is adhered to.

A motion for reconsideration may be granted based on "[1] an intervening change of controlling law, [2] the availability of new evidence, or [3] the need to correct a clear error or prevent manifest injustice." *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992). Plaintiff argues that this Court improperly generalized and characterized evidence of acts tending to show constructive discharge, failed to consider controlling authority on claims of constructive discharge, and improperly concluded that he failed to establish a genuine issue of material fact as to race-based or age-based discrimination.

Plaintiff takes exception to the categorization of the acts substantiating his claim for constructive discharge. Although the acts were in fact categorized, each independent act was considered in ruling on the motion. There is no authority requiring that this Court repeat plaintiff's recitation of evidence,

nor is there any basis on which to infer a failure to consider all evidence offered from a summary of the evidence if the evidence is categorized.

Although plaintiff makes much ado about whether he established a genuine issue of material fact as to constructive discharge, which this Court concluded he did not, it is not apparent that plaintiff appreciates the significance of a finding of constructive discharge. Such a finding only establishes an adverse employment action for purposes of a prima facie case of discrimination; it will not carry the day in establishing a claim of employment discrimination. *See Fitzgerald v. Henderson*, 251 F.3d 345, 357-58 (2d Cir. 2001). In the present case, summary judgment was not limited to plaintiff's failure to establish constructive discharge as plaintiff could just as easily have argued an adverse employment action on a failure to promote theory, *see Stern v. Trs. of Columbia Univ.*, 131 F.3d 305, 311-12 (2d Cir. 1997), a theory not advanced by plaintiff but generally present in allegations. The issue of constructive discharge was not the principal failing in plaintiff's claim.

Plaintiff refers to two cases which he argues to be controlling. Plaintiff's reference to *Flaherty v. Metromail Corp.*, 235 F.3d 133, 138-39 (2d Cir. 2000), addressing the date on which a claim accrues for purposes of filing a discrimination complaint with the EEOC, is irrelevant. The reference to *Flaherty v. Metromail Corp.*, No. 01-9003, 2002 U.S. App. LEXIS 14126 (2d Cir. July 9, 2002), argued to be a development in discrimination law while the motion was *sub judice*, is relevant but actually runs contrary to plaintiff's argument. That decision affirmed a district court's grant of summary judgment based on plaintiff's "fail[ure] to establish that she was constructively discharged and that [plaintiff] was unable to rebut [defendant's] proffer of credible non-discriminatory reasons for [her supervisor's] actions." *Id.* at *4. As in *Flaherty*, plaintiff's claim fails on the inability to rebut

defendant's non-discriminatory reasons for unfavorable actions.

Plaintiff's allegation that on two occasions a position for which he expressed interest was filled by someone outside the protected class, *see Kerzer v. Kingly Mfg.*, 156 F.3d 396, 401 (2d Cir. 1998), met the *de minimis* standard for a prima facie case of discrimination, *see Byrnie v. Town of Cromwell*, 243 F.3d 93, 101 (2d Cir. 2001). Other than this fact and an equal opportunity climate survey which bore no apparent relevance to the positions at issue, plaintiff provided no evidence to refute the legitimate, non-discriminatory explanations offered by defendant.

Summary judgment will be granted absent evidence that defendant's actions were a pretext for discrimination. *See Meiri v. Dacon*, 759 F.2d 989, 998 (2d Cir. 1985) (affirming grant of summary judgment when plaintiff "provided no indication that any evidence exist[ed] that would permit the trier of fact to draw a reasonable inference of pretext"). To paraphrase footnote 6 of the original ruling, defendant may treat plaintiff shabbily and unfairly as an employee without violating Title VII; defendant may not do so because of a protected characteristic. The only fact on which plaintiff relies to prove pretext is the fact that two persons outside the protected class were hired instead of him. This fact alone, considered along with plaintiff's evidence that he was treated very poorly by his employer, does not afford a basis for a reasonable inference that defendant's reasons for hiring another were race or age-based. If such were the case, the decision would endorse the proposition that "summary judgment is unavailable to defendants in discrimination cases,"*McLee v. Chrysler Corp.*, 38 F.3d 67, 68 (2d Cir. 1994), a proposition rejected as unsupportable, *see id.*. There is thus no evidence tending to establish a genuine issue of material fact as to pretext, thus the prior ruling granting summary judgment is adhered to.

CONCLUSION

Defendant's motions for reconsideration (Doc. 138) is **granted**. The original ruling granting defendant's motion for summary judgment (Doc. 113) is **adhered to**.

SO ORDERED.

Dated at New Haven, Connecticut, February ___, 2003.

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Peter C. Dorsey
United States District Judge